

**Town of Milford
Zoning Board of Adjustment Minutes
Case #2014-06
Map 39 Lot 66-8
June 5, 2014
Stephen Martin & Sarah St. Laurent Martin
Special Exception**

Present: Fletcher Seagroves, Pro Tem
Laura Horning
Michael Thornton
Len Harten, Alternate
Joan Dargie, Alternate

Excused: Zach Tripp

Secretary: Peg Ouellette

The applicant, Stephen Martin, along with Sarah St. Laurent Martin, owners of 9 Harvest Dr, Map 39, Lot 66-8, a single family residence in the Residence A District are requesting a Special Exception from Article V Sec 5.02.2:A.8 to construct a 12' by 16' shed five (5') ft from both the side and rear property lines where fifteen (15') ft is required.

Minutes approved on July 17, 2014

F. Seagroves opened the meeting by stating that the Chairman was absent and he would be acting as Chair for the meeting. He read from the rules of the Board covering this situation. Len Harten nominated Fletcher Seagroves as acting Chair. Laura Horning seconded; all were in favor. F. Seagroves stated the hearings are held in accordance with the Town of Milford Zoning Ordinance and the applicable New Hampshire Statutes. He continued by informing all of the procedures and introduced the Board. He read the notice of hearing into the record. The list of abutters was read. Stephen Martin, the applicant, was present and no abutters were present.

Applicant's presentation:

S. Martin gave a brief description of what he wants to do and read Bill Parker's comments re issue of a non-disturbance buffer and drainage easement. He set up a meeting with Bill Parker, which took place the day before. He showed the Board a copy of the plan recorded at the county courthouse. Labeled as proposed non-disturbance buffer, nothing was ever filed or attached to the deed making it a non-disturbance buffer. The drainage easement is labeled in the drawing as proposed but there was an easement filed making it permanent. Bill Parker asked him to keep off that easement which made it 20 ft from his rear property line, to drain for access to the drain. The drain is a 4-inch perforated pipe; all of their perimeter drains attach to it; it is 8 to 10 ft below ground. It would take a large piece of equipment to get to it, which equipment would be capable of moving the shed. There is nothing in the easement saying he can't build on it. Main issue he anticipates becoming a problem is maintenance. He quoted from #3 of the Declaration of Drainage Easements which states owner's responsibilities for maintaining, replacing, repairing

the portion of the drainage system on the subject lot. Whether the shed is there or not, it will be his responsibility to get down there to do repairs.

L. Harten said the small lot was a concern. Does he need to get that close to abutters?

S. Martin showed pictures to the board of the back corner. He referred to an e-mail he received from Bill and Kathy Downs, owners of the property next door and most impacted, stating they had no issue with the location or size of the shed.

There was discussion among L. Harten, F. Seagroves & L. Horning whether that e-mail could be read into the record.

F. Seagroves asked if the shed will have a foundation and whether it will be a cement slab.

S. Martin responded it will not be a cement slab and he will speak to the Building Dept. about the building permit. He understood the procedure was to let ZBA approve and then go through the process.

He said his other option is to build a 10 by 12 ft, which he can do without a permit or meeting setbacks. Anything under 120 sq. ft doesn't need a permit.

J. Dargie asked about the location in the picture and S. Martin showed her where it would be.

L. Harten asked, if used, whether sonotubes would be in the non-disturbance buffer and the proposed drainage culvert.

S. Martin said one of them would be in the buffer and one in the drainage easement, which is not a proposed easement; it is a final easement.

L. Harten stated having to remove the shed and take down the sonotubes for repairs would be a problem.

S. Martin stated an excavator would be used to dig and it would be able to move the shed. He understood that was his responsibility.

L. Horning asked is there a reason he couldn't come in front? She expressed concern having no way of knowing the weight of the shed once it is filled or whether it might shift in the future.

S. Martin responded if this is denied he will build a 10 by 12 and build on top of the easement.

L. Horning acknowledged his deed allows it.

S. Martin and L. Horning discussed her concerns not giving access to easement if there is a drainage issue and the possibility of moving the shed forward 4 to 5 ft. in front of it, and S. Martin saying he didn't see any restrictions in the easement as long as he provides access. L. Horning said that may have been an oversight when the person wrought the deed.

M. Thornton asked the possibility of being 5 ft on the side of the drainage and 15 ft on the other side.

S. Martin said 15 ft didn't get him out of the easement. If he stays out of the drainage he is at 20 ft, more than the town would recommend.

L. Horning suggested a few ft as a compromise.

S. Martin said it was more than a few ft – it would be 15 ft. L. Horning said he wouldn't be directly on top of it.

J. Dargie asked whether the drainage easement required that he allow anybody to access those pipes whenever they want.

S. Martin said for maintenance, if needed.

J. Dargie said the shed is on sonotubes to keep the shed off the ground.

L. Horning said not knowing whether it would be an issue or not, she was questioning it being that close. In her opinion it would be wise to come away even 4 or 5 ft.

M. Thornton said part of his concern was addressed by fact that if the shed breaks while trying to move it, it is on the applicant.

S. Martin said he takes full responsibility and there was a legal document stating that.

L. Harten said there would be the same issue with a 10 by 12 ft, and they are discussing only an additional 2 by 4 ft.

F. Seagroves suggested, if they approve, making a stipulation that the shed would be moved to gain access to do maintenance, just to cover themselves. That would be one of his conditions.

S. Martin had no issue with that.

L. Harten commented that he didn't think applicant had any choice.

F. Seagroves asked the Board if there were any further questions; there were none. He opened the meeting for public comment.

Kathy Bauer of 247 North River Road asked the size of the shed.

S. Martin said it was 12 by 16 ft.

K. Bauer said, in reading the Planning Director's notes, he seemed concerned about the easement and he recommended the shed be located outside the easement.

S. Martin said that was why he requested the meeting with Bill Parker.

J. Dargie questioned that Lots 66-6 and 66-7 are mentioned, but 66-7 is not listed as an abutter.

S. Martin said they are not an abutter.

F. Seagroves asked about the type of drainage.

S. Martin said it is perforated pipe. All foundation perimeter drains tie across into this. The town has a large easement, so all houses have a perforated pipe in the foundation that comes to the drainage easement and ties into the main one. That is why it is 8 to 10 ft. down.

F. Seagroves said there probably would be no water in there unless there is a lot of rain.

S. Martin said it is pretty rare that water comes out. Sometimes in the spring water comes out.

L. Harten asked if applicant has water in his cellar, or if his neighbors did. S. Martin said no water in his cellar. One neighbor did but it was a crack in the foundation, which was fixed.

Suzanne Fournier of 9 Woodward Dr., Milford. She said calculated the measurements, a 12 by 16 ft. shed is a 60 percent increase in size over a 10 by 12 ft.

There were no further comments or questions and F. Seagroves closed the public portion of the hearing.

F. Seagroves asked the applicant to read his application into the record with criteria for a special exception.

Description of proposed use:

1. The proposed use shall be similar to those permitted in the district:

There are many sheds in the neighborhood. "Accessory structures are permitted in Zone A".

2. The specific site is an appropriate location for the proposed use because:

The proposed location is in an accessible area that will not interfere with the current use of my property.

3. The use as developed will not adversely affect the adjacent area because:

There are other sheds in the area and will be located in the rear of my property.

4. There will be no nuisance or serious hazard to vehicles or pedestrians:

It is in the back yard.

5. Adequate appropriate facilities will be provided for the proper operation of the proposed use because:

Construction will meet all applicable building codes.

L. Harten asked if any other sheds in the neighborhood were built on easements.

S. Martin said one, but it is 10 by 12 and is at 5 to 6 ft. In response to L. Harten's question, he said it sits in the easement but no permit required because of the size.

L. Horning felt that was probably an oversight on the deed. She would like the Board to consider putting a stipulation in place that if anyone has a problem with drainage because of the shed sitting there- not just access- if a problem arises down the road due to shifting of the shed, weight of the shed, wind storm, etc.. The deed states they don't want anything obstructing those drainages.

J. Dargie asked the reason for the larger size.

S. Martin said it would be for storage of lawnmower, snowblower, tools, kids' toys, etc.

L. Horning said the size is stated so an engineer can look and they may say this size and weight could be put there, or not.

J. Dargie asked if size is related to the drainage easement.

S. Martin said no. The Town has a 120 sq. ft. maximum shed.

L. Horning said we don't know why – whether to protect drainage, or what.

M. Thornton said, if approved, a stipulation putting all the risk and cost on the homeowner and his agreeing to that, would be needed.

L. Horning said yes, in her opinion.

F. Seagroves read an e-mail sent to the applicant from William Downs indicating neither he nor his wife had any issue with the size or location of the proposed shed.

There being no further public comment, the Chair closed the public portion of the meeting.

J. Dargie asked the applicant if anyone was living at Lots 66-6 and 66-7.

S. Martin said Lot 66-7 was purchased by a developer and just started doing a foundation that day. Occupant of 66-6 has a 10 by 12 shed.

J. Dargie said drainage is already there, because Bill's notes say they are the ones affected.

F. Seagroves said they are upstream, which is why they would be affected. S. Martin agreed, everything flows toward his street.

F. Seagroves asked the Board if they feel the application meets all the requirements.

A. The proposed use shall be similar to those permitted in the district:

L. Horning – yes. She quoted from the Board Handbook stating that the Board may attach conditions. She said the proposed use is similar to those in the district. Sheds are allowed.

M. Thornton – It is allowed. There are already sheds in the area.

J. Dargie – agreed. Use is allowed by the ordinance. There are other sheds.

L. Harten – he asked if there would be electricity to the shed. Applicant said no.

L. Harten said there are other sheds in the area.

F. Seagroves – It is a shed and there are a lot of sheds in the area.

B. The specific site is an appropriate location for the proposed use:

L. Horning – if there were a stipulation adopted, if it is accepted, it would be an appropriate location.

M. Thornton – he wrestled with this because of the setbacks. But applicant is willing to assume all risks, in writing he assumed

J. Dargie – yes except it was noted by B. Parker.

L. Harten – was wavering on this, but applicant seems willing to take all responsibility to move shed if necessary to make repairs. Not sure if they will put in as a condition or if they need one.

F. Seagroves – Had a little problem but knowing they only have .9 acres of land – he understands.

C. The use developed will not adversely affect the adjacent area:

L. Horning - as long as safeguards are put in place and respected by the owner, who has made it clear he will.

M. Thornton – they are already hooked up. He didn't see any need now to get to any section of the drain system.

J. Dargie - It is a back yard shed.

L. Harten – he didn't believe it would. The whole drainage system is in place.

F. Seagroves – This is a drainage pipe that is down about 8 ft. It would take quite a bit of weight above to damage it. Applicant has specified he will move shed if they need something in there.

D. There will be no nuisance or serious hazard to vehicles or pedestrians:

L. Horning – she's not sure a vehicle could get back there.

M. Thornton – There is none.

J. Dargie – Agreed.

L. Harten – Didn't think there was an issue in this case.

F. Seagroves – It is in the tree line.

E. Adequate appropriate facilities will be provided for the proper operation of the proposed use:

L. Horning – They are dictated by the deed and stipulation by the Board with possible approval.

Mr. Thornton – not sure how this fits here. He can't say it makes sense to apply in this case. He saw no problem with being allowed by the ordinance.

J. Dargie – It is on his property and there is space around it.

L. Harten - The Building and Planning Dept. will be out there as construction goes forward to make sure it is done properly so he didn't have an issue with that one.

F. Seagroves – It is a shed. He didn't know what they need for that.

L. Horning repeated her concern is same as Bill Parker's, which is obstruction sitting above the drain. Deed restriction allows access to fix the drain. Her point is the shed cannot go back there again if it is determined the shed is causing the problem. There is no way of knowing if another homeowner moves in. It makes sense to stipulate that the homeowner would remove or relocate it if it becomes a problem for the drain.

M. Thornton assumed as a previous owner he would not put a sonotube directly over the pipe.

S. Martin said it was his understanding it was to the right of center.

There was discussion as to the manipulating of the location. S. Martin said he would be more than happy to align the sonotubes so they are not dead center.

L. Harten agreed with L. Horning's point about future owners. Should they put it on as a condition?

L. Horning said a condition that any owners down the road would be responsible to move it if the shed is determined to be the cause.

M. Thornton mentioned transferring the deed. L. Horning said it doesn't run with the deed.

L. Horning made a motion to put a condition on the request for special exception in the event it is approved that the homeowner be responsible to remove and/or relocate the shed should it be found that the shed is problematic to the drain that it is going to be sitting on.

M. Thornton added, or to block access.

L. Horning said that was already on the deed. Her concern was that the shed may not be able to be put back there again.

L. Harten seconded the motion.

All voted in favor.

The Board went on to vote on the criteria.

Is the special exception allowed by the ordinance?

L. Horning – yes; J. Dargie – yes; Len Harten – yes; M. Thornton – yes; F. Seagroves - yes

Are the specified conditions are present under which a special exception may be granted?

M. Thornton – yes; L. Harten – yes; J. Dargie – yes; L. Horning – yes; F. Seagroves – yes

F. Seagroves requested a motion to approve the application.

Laura Horning made the motion to approve Case # 2014-06 with condition they attached to the application regarding the shed being moved and relocated if it is found to be a cause of an issue.

L. Harten seconded the motion to approve Case #2014-06.

Final Vote:

M. Thornton – yes; L. Harten – yes; J. Dargie – yes; L. Horning – yes; F. Seagroves -yes

Case #2014-06 was approved by unanimous vote.

F. Seagroves reminded the applicant of the 30-day appeal period.